

Appl. No. : 10/057,617  
Filed : January 23, 2002

## REMARKS

In the Office Action mailed January 17, 2003, the Examiner rejected Claims 1-17 under double patenting doctrine. The Examiner also rejected Claims 1-12 and 14-17 under 35 U.S.C. § 112 for being indefinite. The Examiner also rejected Claims 1-3, 5-10, and 12 under 35 U.S.C. § 102(b) as being anticipated by the Smith et al. (U.S. Patent No. 5,735,089) reference. The Examiner also rejected Claims 4 and 11 under 35 U.S.C. § 103(a) as being unpatentable over the Smith et al. reference in view of the Mesnel et al. (U.S. Patent No. 5,261,206) reference. By this amendment, the Applicant addresses each of these rejections.

### Rejection under double patenting doctrine

The Examiner rejected Claim 1-17 under the double patenting doctrine in view of the U.S. Patent No. 6,408,574 and U.S. Patent No. 6,205,723. The Applicant submits concurrently herewith a terminal disclaimer in accordance with 37 CFR 1.321(c) and 37 CFR 1.130(b) to overcome the double patenting rejection.

### Rejection under 35 U.S.C. § 112

The Examiner rejected Claims 1-12 and 14-17 for being indefinite. The Applicant has amended some of the rejected claims to clarify and to provide proper antecedent support for some of the language used in the claims.

### Rejection under 35 U.S.C. § 102(b)

The Examiner rejected Claims 1-3, 5-10, and 12 as being anticipated by the Smith et al. (Smith) reference. In particular, the Examiner states that the Smith reference discloses retainers (16, 18) that retain a panel (12) adjacent a glazing (14).

After carefully reviewing the Smith reference, the Applicant notes that Smith does not teach or suggest any concept of the retainers being dimensioned so as to allow the panel to slide, thereby allowing the panel to be releasably retained by the retainer. Such feature is recited in amended Claim 1 of the pending application as

“... the protective panel is movable into the second recess a distance selected such that the first edge of the protective panel is exposed from the first recess to thereby permit removal of the first protective panel from the retainer.”

In contrast, the Smith reference teaches away from the concept of slidably installing and removing the protective panel. Figures 2 and 3 of the Smith reference teach a seal assembly (15) having a first and second arms (33 and 32 respectively) that interlock to retain the sacrificial

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glazing (14) adjacent the glazing (12). Column 4, lines 21-39 in the Smith reference describe a method of removing the sacrificial glazing by use of a specific tool (such as "CLR Locking Tool for Self-Seal Stripping") to disengage the interlocked first and second arms. Such tool-based disengagement of the first and second arms is required along the entire length of the seal assembly in order to release the sacrificial glazing. Furthermore, although the Smith reference does not describe the sacrificial glazing installation method with the same detail as that of removal, one can assume that the installation is generally a reverse process of removal. That is, the installation requires engagement of the first and second arms along the entire length of the seam assembly.

In contrast, the window assembly of Claim 1 does not require such a tedious removal/installation process. The protective panel can be removed simply by *moving the panel* enough to make the panel's first edge clear the first recess. Moving of the panel is facilitated by the second recess being dimensioned to allow corresponding motion of the panel's second edge therein. Once the first edge clears the first recess, the panel can be pulled away from the glazing. The installation can be achieved by inserting the panel's second edge into the second recess far enough to provide clearance of the panel's first edge with respect to the first recess. The first edge can then be inserted into the first recess, thereby completing the installation.

For the foregoing reasons, the Applicant respectfully submits that the Smith reference in no way anticipates or contemplates the concept of recesses adapted for moving the edges of the protective panel to allow quick and simple removal and installation. Thus, the Applicant respectfully submits that Claim 1 and the dependent Claims 2, 3, 5-10, and 12 are patentable over the Smith reference.

Rejection under 35 U.S.C. § 103(a)

The Examiner rejected Claim 4 as being unpatentable over the Smith reference in view of the Mesnel et al. (Mesnel) reference. In particular, the Examiner states that the concept of serrated mating edges (of a tubular seal member in Mesnel) would have been obvious to one of ordinary skill in the art of window application.

The Applicant notes that Claim 4 has the limitation of the serrated mating feature, as well as all of the limitations of the claims (3, 2, and 1) that it depends on. The Applicant has already shown above that Claims 1-3 are patentable over the Smith reference. Furthermore, the Mesnel

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reference was not a basis for rejection of Claim 1-3. Therefore, the Applicant submits that Claim 4 with all of its limitations, is patentable over the Smith and Mesnel references.

The Examiner also stated that providing a second panel is no more than a duplication of parts. The Applicant respectfully assumes that the Examiner is referring to Claim 11. Again, the Applicant notes that Claim 11 depends on Claim 1, and thus includes all of the limitations recited in Claim 1. The Applicant has shown above that Claim 1 is patentable over the cited reference (Smith). Thus, the Applicant submits that Claim 11 with all of its limitations, is also patentable over the Smith and/or Mesnel references.

#### SUMMARY

For the foregoing reasons, the Applicant submits that the amended claims of the pending application are allowable. Should there be any impediment to the prompt allowance of this application that could be resolved by a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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